

JAN 20 2017

A BILL FOR AN ACT

RELATING TO FRANCHISES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 482E-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§482E-6 Relationship between franchisor or subfranchisor**
4 **and franchisee.** Without limiting the other provisions of this
5 chapter, the following specific rights and prohibitions shall
6 govern the relation between the franchisor or subfranchisor and
7 its franchisees:

8 (1) The parties shall deal with each other in good
9 faith[-];

10 (2) For the purposes of this chapter and without limiting
11 its general application, it shall be an unfair or
12 deceptive act or practice or an unfair method of
13 competition for a franchisor or subfranchisor to:

14 (A) Restrict the right of the franchisees to join an
15 association of franchisees[-];

16 (B) Require a franchisee to purchase or lease goods
17 or services of the franchisor or from designated



1 sources of supply unless [~~such~~] the restrictive
2 purchasing agreements are reasonably necessary
3 for a lawful purpose justified on business
4 grounds. Suppliers suggested or approved by a
5 franchisor as meeting its standards and
6 requirements shall not be deemed designated
7 sources of supply[-];

8 (C) Discriminate between franchisees in the charges
9 offered or made for royalties, goods, services,
10 equipment, rentals, advertising services, or in
11 any other business dealing, unless and to the
12 extent that any classification of or
13 discrimination between franchisees is:

14 (i) Based on franchises granted at materially
15 different times, and [~~such~~] the
16 discrimination is reasonably related to
17 [~~such~~] the differences in time;

18 (ii) [~~Is related~~] Related to one or more programs
19 for making franchises available to persons
20 with insufficient capital, training,



- 1 business experience, or education, or
2 lacking other qualifications;
- 3 (iii) ~~[Is-related]~~ Related to local or regional
4 experimentation with or variations in
5 product or service lines, or business
6 formats or designs;
- 7 (iv) ~~[Is-related]~~ Related to efforts by one or
8 more franchisees to cure deficiencies in the
9 operation of franchise businesses or
10 defaults in franchise agreements; or
- 11 (v) ~~[Is-based]~~ Based on other reasonable
12 distinctions considering the purposes of
13 this chapter and is not arbitrary~~[-]~~ ;
- 14 (D) Obtain money, goods, services, anything of value,
15 or any other benefit from any other person with
16 whom the franchisee does business on account of
17 ~~[such]~~ that business unless the franchisor
18 advises the franchisee in advance of the
19 franchisor's intention to receive ~~[such]~~ the
20 benefit~~[-]~~ ;



1 (E) Establish a similar business or [~~to~~] grant a
2 franchise for the establishment of a similar
3 business at a location within a geographical area
4 specifically designated as the exclusive
5 territory in a franchise previously granted to
6 another franchisee in a currently effective
7 agreement, except under the circumstances or
8 conditions prescribed in [~~such~~] the agreement.

9 The fact that other franchisees or the franchisor
10 may solicit business or sell goods or services to
11 [~~people~~] persons residing in [~~such~~] the
12 geographical territory shall not constitute the
13 establishment of a similar business within the
14 exclusive territory[~~]~~;

15 (F) Require a franchisee at the time of entering into
16 a franchise to assent to a release, assignment,
17 novation, or waiver [~~which~~] that would relieve
18 any person from liability imposed by this
19 chapter. Any condition, stipulation, or
20 provision binding any person acquiring any
21 franchise to waive compliance with any provision



1 of this chapter or a rule [~~promulgated hereunder~~]
2 adopted shall be void. This paragraph shall not
3 bar or affect the settlement of disputes, claims,
4 or civil suits arising or brought under this
5 chapter[~~-~~];

6 (G) Impose on a franchisee by contract, rule, or
7 regulation, whether written or oral, any
8 unreasonable and arbitrary standard of
9 conduct[~~-~~];

10 (H) Terminate or refuse to renew a franchise except
11 for good cause, or in accordance with the current
12 terms and standards established by the franchisor
13 then equally applicable to all franchisees,
14 unless and to the extent that the franchisor
15 satisfies the burden of proving that any
16 classification of or discrimination between
17 franchisees is reasonable, is based on proper and
18 justifiable distinctions considering the purposes
19 of this chapter, and is not arbitrary. For
20 purposes of this paragraph, good cause in a
21 termination case shall include[~~-~~] but not be



1 limited to [7] the failure of the franchisee to
2 comply with any lawful, material provision of the
3 franchise agreement after having been given
4 written notice thereof and an opportunity to cure
5 the failure within a reasonable period of
6 time [7];

7 (I) Refuse to permit a transfer of ownership of a
8 franchise, or of a proprietorship, partnership,
9 corporation or other business entity that is a
10 franchisee or subfranchisor, except for good
11 cause. For purposes of this paragraph good cause
12 shall include, but not be limited to:

13 (i) The failure of a proposed transferee to meet
14 any of the franchisor's or subfranchisor's
15 reasonable qualifications or standards then
16 in effect for a franchisee or subfranchisor;

17 (ii) The fact that the proposed transferee or any
18 affiliated person of the proposed transferee
19 is a competitor of the franchisor or
20 subfranchisor;



1 (iii) The inability or unwillingness of the
2 proposed transferee to agree in writing to
3 comply with and be bound by all lawful
4 obligations imposed by the franchise,
5 including without limitation all instruction
6 and training obligations, and to sign the
7 current form of franchise agreement used by
8 the franchisor or subfranchisor; and

9 (iv) The failure of the franchisee or proposed
10 transferee to pay any sums owing to the
11 franchisor and to cure any default in the
12 franchise agreement or other agreements with
13 the franchisor existing at the time of the
14 proposed transfer.

15 A franchisor or subfranchisor shall have thirty
16 days after being notified in writing of a
17 proposed transfer to approve or disapprove in
18 writing a proposed transfer of ownership or
19 control of a franchise, or of a proprietorship,
20 partnership, corporation or other business entity
21 that is a franchisee or subfranchisor, stating



1 its reason for disapproval. If a franchisor or
2 subfranchisor fails to approve or disapprove a
3 proposed transfer in writing within [~~such~~] this
4 period, the franchisor or subfranchisor shall be
5 deemed to have approved [~~such~~] the transfer[-];
6 and

7 (J) Restrain a franchisee, directly or indirectly,
8 from sourcing processing services for electronic
9 credit cards, credit identifications, debit
10 cards, prepaid cards, or other transaction
11 authorization cards from processing service
12 providers of the franchisee's choosing when these
13 processing services are used, or could reasonably
14 be anticipated to be used, by a franchisee in a
15 substantial amount of its commercial
16 transactions; provided that it is not a violation
17 of this section for a franchisor to establish
18 reasonable, written, specific standards regarding
19 the nature and quality of the processing service
20 providers;



1 (3) Upon termination or refusal to renew the franchise the
2 franchisee shall be compensated for the fair market
3 value, at the time of the termination or expiration of
4 the franchise, of the franchisee's inventory,
5 supplies, equipment, and furnishings purchased from
6 the franchisor or a supplier designated by the
7 franchisor; provided that the franchisee need not be
8 compensated for personalized materials [which] that
9 have no value to the franchisor [~~need not be~~
10 ~~compensated for~~]. If the franchisor refuses to renew
11 a franchise for the purpose of converting the
12 franchisee's business to one owned and operated by the
13 franchisor, the franchisor, in addition to the
14 remedies provided in this paragraph, shall compensate
15 the franchisee for the loss of goodwill. The
16 franchisor may deduct from [~~such~~] the compensation
17 reasonable costs incurred in removing, transporting,
18 and disposing of the franchisee's inventory, supplies,
19 equipment, and furnishings pursuant to this
20 [~~requirement,~~] paragraph and may offset from [~~such~~]
21 the compensation any moneys due to the franchisor[~~-~~];



1 (4) ~~[The provisions of this]~~ This chapter shall apply to
2 all written or oral arrangements with the franchisee
3 including but not limited to the franchise offering,
4 the franchise agreement, sales of goods or services,
5 leases and mortgages of real or personal property,
6 promises to pay, security interest, pledges, insurance
7 contracts, advertising contracts, construction or
8 installation contracts, servicing contracts, and all
9 other ~~[such]~~ arrangements in which the franchisor or
10 subfranchisor has any direct or indirect interest~~[+]~~ i
11 and

12 (5) In any proceedings, l damages may be based on reasonable
13 approximations but not on speculation."

14 SECTION 2. Section 482E-9, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) Any person who sells or offers to sell a franchise in
17 violation of this chapter shall be liable to the franchisee or
18 subfranchisor who may sue for damages caused thereby or for
19 rescission or other relief as the court may deem appropriate.
20 In the case of a violation of section 482E-5(b), l rescission is
21 not available to the plaintiff if the defendant proves that the



1 plaintiff knew the facts concerning the untruth or admission, or
2 [~~that~~] the defendant exercised reasonable care and did not know,
3 or if the defendant had exercised reasonable care would not have
4 known of the untruth or admission. In case of a violation of
5 this chapter where the sole violation was a violation of section
6 482E-6(2)(J), rescission is not available."

7 SECTION 3. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.

10

INTRODUCED BY:



By Request



Report Title:

Franchises; Relationship Between Franchisor or Subfranchisor and Franchisee; Civil Liability

Description:

Establishes an unfair or deceptive act or practice or an unfair method of competition for a franchisor or subfranchisor to restrain a franchisee from sourcing processing services for transaction authorization cards from processing service providers of a franchisee's choosing. Allows a franchisor to establish reasonable written standards regarding the nature and quality of the processing service providers. Prohibits rescission as an available remedy for a franchisor or subfranchisor restraining a franchisee from sourcing processing services for transaction authorization cards from processing service providers of the franchisee's choosing.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

